

EXHIBIT 4

Highly Confidential - Subject to Further Confidentiality Review

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THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

IN RE: NATIONAL :
PRESCRIPTION OPIATE : MDL NO. 2804
LITIGATION :

: CASE NO.
THIS DOCUMENT : 1:17-MD-2804
RELATES TO ALL CASES: Hon. Dan A. Polster

- - -

Thursday, April 25, 2019

- - -

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

- - -

Videotaped deposition of DAVID A.
KESSLER, M.D. (Day 1), taken pursuant to
notice, was held at Baron & Budd, 600 New
Hampshire Avenue NW, Floor G, Washington, DC
20037, beginning at 9:28 a.m., on the above
date, before Lisa V. Feissner, RDR, CRR, Notary
Public.

- - -

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2 I N D E X

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4 Testimony of: DAVID A. KESSLER, M.D.

5 By Ms. Freiwald 12

By Mr. Boranian 410

6 By Mr. Lavelle 412

7

8 - - -

9 E X H I B I T S

10 - - -

KESSLER

11 EXHIBIT NO. DESCRIPTION PAGE

12 1 Expert Report, David Kessler, M.D. 31

13 2 2019.04.23 Dr. David Kessler 91
Supplemental Reliance List

14

3 Errata Sheet for the 3.26.2019 93
Expert Report of
David E. Kessler, M.D.

16

4 Dear Healthcare Professional 320
letter from Purdue dated
July 18, 2001 with attachments
PDD1501710124 - 1501710126
PDD1501610836 - 1501610844

19

5 OxyContin label 320
Revised: 04/2014
PPLP003275296 - 003275307

21

6 OxyContin label 320
Revised: 12/2016
Reference ID: 4326201

23

24

1 Kessler, M.D., and all counsel will be
2 noted upon the stenographic record.

3 The court reporter today is Lisa
4 Feissner, and she will now please swear
5 in the witness.

6 DAVID A. KESSLER, M.D.,
7 having been first duly sworn, was examined and
8 testified as follows:

9 EXAMINATION

10 BY MS. FREIWALD:

11 Q. Dr. Kessler, I'm Hope Freiwald. I
12 represent the Purdue defendants in this
13 litigation, but I'm going to be asking
14 questions on behalf of the defendant group as
15 well this morning in addition to questions with
16 regard to Purdue specifically. Okay?

17 A. Good morning.

18 Q. Good morning.

19 Dr. Kessler, do you stand by your
20 prior statements that FDA bears
21 responsibilities for mistakes made regarding
22 prescription opioids?

23 A. I don't believe that's an exact
24 quote. If you can show me my quotes, I'm happy

1 one second?

2 MS. LEVY: Can we go off the
3 record?

4 MR. DAVIS: We have a -- I have a
5 suggestion.

6 MR. RAFFERTY: Uh-huh, sure. I
7 love suggestions.

8 MS. LEVY: Off the record?

9 VIDEO OPERATOR: Off the record?

10 MR. RAFFERTY: Yeah.

11 VIDEO OPERATOR: 6:44, we are off
12 the video record.

13 (A discussion was held off the
14 record.)

15 VIDEO OPERATOR: 6:46, we are on
16 the video record.

17 EXAMINATION

18 BY MR. BORANIAN:

19 Q. Steven Boranian for Defendant
20 AmerisourceBergen Drug Corporation, which is a
21 distributor, Dr. Kessler.

22 You said earlier today that you
23 have no opinions with regard to distributors,
24 and that's still true now, correct?

1 A. Correct.

2 Q. Now, you've listed the names of all
3 the defendants in this case in your report, I
4 think at paragraph 10. Is that right?

5 A. I believe that's correct.

6 Q. So I have two questions, Doctor.
7 Have you formed any opinions with
8 regard to any of the distributors who are
9 listed as defendants in your report?

10 A. Nothing that I will give at trial,
11 no.

12 Q. Well, you predicted my next
13 question, Doctor, which is, do you intend to
14 appear at trial and give opinions with regard
15 to any distributor listed in your report?

16 A. Whether I appear at trial is simply
17 counsel and the Court. I -- I --

18 What was the first question? What
19 was -- what was the full question? I'm sorry.

20 Q. The question is, do you intend to
21 appear at trial and offer any opinions with
22 regard to distributors?

23 A. If I appear at trial, I do not
24 intend to offer any opinions with regard to

1 distributors.

2 MR. BORANIAN: Thank you, Doctor.

3 THE WITNESS: Thank you, Counselor.

4 MR. BORANIAN: I think we can just
5 stay on the record.

6 MR. RAFFERTY: Is that going to be
7 the same for all the other distributors?

8 Oh, okay. I was going to say,
9 maybe we can just get him to say --

10 EXAMINATION

11 BY MR. LAVELLE:

12 Q. Good afternoon, Doctor. John
13 Lavelle from Morgan, Lewis, and I'm
14 representing Rite Aid -- actually, Rite Aid of
15 Maryland, doing business as the Maryland -- as
16 the Mid-Atlantic Distribution Center.

17 Are you aware that there are a
18 number of pharmacy entities that are named as
19 defendants in this litigation?

20 A. I am, sir.

21 Q. And I want to ask you some
22 questions about those pharmacies and
23 specifically about Rite Aid, CVS, Wal-Mart,
24 Walgreens, and Giant Eagle.

1 A. Okay.

2 Q. Can we refer to those as the retail
3 chain pharmacies?

4 A. Fair.

5 Q. Doctor, do you have any opinions,
6 as we sit here today, that you intend to offer
7 with respect to the retail chain pharmacies?

8 A. At trial, no.

9 Q. You don't have any in the report
10 that you've served; is that correct?

11 A. That's correct.

12 Q. And you don't intend to serve -- to
13 offer any opinions at trial --

14 A. Correct.

15 Q. -- concerning any of those retail
16 chain pharmacies?

17 A. Correct.

18 MR. LAVELLE: Thank you, Doctor.

19 That's all I have.

20 THE WITNESS: Thank you, Counselor.

21 MR. RAFFERTY: That's it?

22 VIDEO OPERATOR: 6:49. We are off
23 the video record.

24 (Off the record at 6:49 p.m.)